

## **REMARKS**

### **A. BACKGROUND**

The present Amendment is in response to the Office Action mailed February 3, 2009. Claims 1, 2, 5-14, 16-20, 23 and 24 were pending and rejected in view of cited art.<sup>1</sup> Claims 1, 8, 16, and 24 are amended. Claims 1, 2, 5-14, 16-20, 23 and 24 remain pending in view of the above amendments.<sup>2</sup>

Reconsideration of the application is respectfully requested in view of the above amendments to the claims and the following remarks. For the Examiner's convenience and reference, Applicant's remarks are presented in the order in which the corresponding issues were raised in the Office Action.

Please note that the following remarks are not intended to be an exhaustive enumeration of the distinctions between any cited references and the claimed invention. Rather, the distinctions identified and discussed below are presented solely by way of example to illustrate some of the differences between the claimed invention and the cited references. In addition, Applicant requests that the Examiner carefully review any references discussed below to ensure that Applicant's understanding and discussion of the references, if any, is consistent with the Examiner's understanding.

### **B. REJECTION UNDER 35 U.S.C. § 112, SECOND PARAGRAPH**

The Office Action rejected claims 1 and 24 under 35 U.S.C. § 112, second paragraph, as having insufficient antecedent basis for the limitation of the claims. In view of the amendments to claims 1 and 24, Applicant respectfully requests withdrawal of the rejection.

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<sup>1</sup> Although the prior art status of the cited art is not being challenged at this time, Applicant reserves the right to challenge the prior art status of the cited art at any appropriate time, should the need arise. Accordingly, any arguments and amendments made herein should not be construed as acquiescing to any prior art status of the cited art.

<sup>2</sup> Support for the claim amendments and/or new claim(s) can be found throughout the specification and/or drawings as originally filed.

**C. PRIOR ART REJECTIONS**

**I. REJECTION UNDER 35 U.S.C. §102(E)**

The Office Action rejected claims 1, 2, 5-14, 16-20, 23, and 24 under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 5,320,632 (*Heidmueller*). Because *Heidmueller* does not teach or suggest each and every element of the rejected claims, Applicant respectfully traverses this rejection in view of the following remarks.

The Office Action indicates that "the distal most ends of the entire suture of *Heidmueller* appear to be disposed outside of the incision," (Office Action, pg. 4). By this amendment, independent claims 1, 8, 16, and 24 have been amended to recite, respectively, "positioning distal-most ends of a suture distally of the aperture of the tissue wall," "positioning distal-most ends of a suture within the vessel," "positioning distal-most ends of a suture within the vessel," and "the suture device positioning distal-most ends of a suture distally of the aperture in the tissue wall."

Since *Heidmueller* does not teach the inventions being claimed in independent claims 1, 8, 16, and 24, Applicant respectfully requests that the rejection under 35 U.S.C. § 102(e) of independent claims 1, 8, 16, and 24 be withdrawn. For at least the same reasons, Applicant respectfully submits that *Heidmueller* neither teaches nor suggests the inventions claimed in dependent claims 2, 5-14, 17-20, and 23. As such, Applicant respectfully requests that the rejection under 35 U.S.C. § 102(e) of dependent claims 2, 5-14, 17-20, and 23 be withdrawn.

**D. CONCLUSION**

In view of the foregoing, Applicant respectfully submits that the other rejections to the claims are now moot and do not, therefore, need to be addressed individually at this time. It will be appreciated, however, that this should not be construed as Applicant acquiescing to any of the purported teachings or assertions made in the last action regarding the cited art or the pending application, including any official notice. Instead, Applicant reserves the right to challenge any of the purported teachings or assertions made in the last action at any appropriate time in the future, should the need arise. Furthermore, to the extent that the Examiner has relied on any Official Notice, explicitly or implicitly, Applicant specifically requests that the Examiner provide references supporting the teachings officially noticed, as well as provide the required motivation or suggestion to combine references with the other art of record.

For at least the foregoing reasons, Applicant respectfully submits that the pending claims are neither anticipated by nor made obvious by the art of record. In the event that the Examiner finds any remaining impediment to a prompt allowance of this application that may be clarified through a telephone interview, the Examiner is requested to contact the undersigned attorney.

Dated this 4th day of May, 2009.

Respectfully submitted,

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